LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
FEB 1 1967
JOHN F. DAVIS, CLERK

No. 841

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

COUNTRY MUTUAL INSURANCE COMPANY,
Bloomington, Illinois, (Defendant-Appellant),
Petitioner,

vs.

GUSTAV ANDEEN, Administrator of the Estate of Gustav K. Andeen, Deceased; CONSTANCE ANDEEN, Executor of the Will of August Robert Carlson, Deceased, (Plaintiffs-Appellees),
Respondents.

PETITION FOR REHEARING FROM ORDER OF THE SUPREME COURT OF THE UNITED STATES DENYING PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

JACK E. HORSLEY
1807 Broadway
Mattoon, Illinois
Telephone ADams 4-6481
Attorney for Petitioner

McCORMICK AND HENDERSON, INC., CHICAGO

No. 841

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

COUNTRY MUTUAL INSURANCE COMPANY, Bloomington, Illinois, (Defendant-Appellant),

Petitioner,

VS.

GUSTAV ANDEEN, Administrator of the Estate of Gustav K. Andeen, Deceased; CONSTANCE ANDEEN, Executor of the Will of August Robert Carlson, Deceased, (Plaintiffs-Appellees),

Respondents.

PETITION FOR REHEARING FROM ORDER OF THE SUPREME COURT OF THE UNITED STATES DENYING PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

COUNTRY MUTUAL INSURANCE COMPANY, Bloomington, Illinois, a Corporation, Petitioner, hereby respectfully presents to the Court its Petition for Rehearing from the Order of this Court denying the Petition for Writ of Certiorari herein. Pursuant to Rule 58 of this Court, your Petitioner suggests to the Court what it believes, in good faith, to be other substantial grounds for granting the

Petition for Certiorari available to the Petitioner although not previously presented herein, as follows:

Under the provisions of the Constitution of the United States, as preserved in this Petitioner's objection to the trial of the case herein without the intervention of a jury, this Petitioner was entitled to a jury adjudication of its contractual rights.* Implicit in those rights is the principle that no state can, by legislative enactment, judicial fiat or otherwise abridge one's freedom of contract nor can any contract be thereby retroactively modified, absent some compelling public policy which over-rides the reciprocal rights and duties created by agreements between private persons.

The right of freedom of contract and the guaranty against abridgement of that right are incorporated in the following provision of the Constitution of the United States:*

> "No state shall enter into any * * * law impairing obligation of contracts * * *"

The Petitioner, as insurer, was entitled to and it is inescapable that it did take into consideration the element of risk in calculating its exposure under "Coverage U" of the policy of insurance, affording protection against losses due to the torts of uninsured motorists. This provision of contract is of great importance not only to this Petitioner but to the insurance industry. If it can be abridged retroactively by judicial decree or judgment, without due process and in violation of the jury guaranty of the Constitution, it is respectfully submitted that this Petitioner has

---

* Constitution of the United States, Article I, Section 10.

not been accorded protection under the guaranty of freedom of contract in the Federal Constitution.

In the case of *Cocos* v. *American Automobile Insurance Co.*, 302 Ill. App. 442, 451, it is held that the element of risk underlies the insurance contract in all instances and inherent in the contractual rights of the insurer is that the risk he assumes will not be enlarged, since risk is the basis of all tabulated premium charges. (See also *American Automobile Insurance Co.* v. *Jones*, 45 Southwestern Reporter [2d] [Tenn.] 52, 53.) The constitutional rights of this petitioner are violated by the judgment below in that it deprives the petitioner of its guaranties in the matter of freedom of contract and this also encroaches wrongfully upon its property without due process. (See pages 5 and 6, Petition for Writ of Certiorari, filed here in this cause December 8, 1966.)

In view of these other substantial grounds available to the Petitioner, although not previously presented, this Petitioner respectfully submits that the Supreme Court of the United States should grant a rehearing and should permit the Petitioner to present to this Court the Illinois authorities in detail on oral argument before this Court. This is an important decision involving a burgeoning area of litigation under automobile insurance contracts on a broad, interstate basis and is consequential to the public as well to insurers of motor vehicles generally. We respectfully believe it warrants the full consideration of this Court.

For the reasons herein stated this Petition for Rehearing should be granted.

Respectfully submitted,
COUNTRY MUTUAL INSURANCE COMPANY
Bloomington, Illinois, a Corporation, Petitioner

By JACK E. HORSLEY
1807 Broadway
Mattoon, Illinois 61938
Its Attorney
Telephone: Area Code 217, 234-6481

CERTIFICATE OF COUNSEL

Counsel certifies that this Petition for Rehearing is presented in good faith and not for delay; further that, in fact, the judgment sought to be reviewed by Petition for Certiorari herein was actually paid in full in open Court on January 12, 1967, subject to reservation of this Petitioner's Petition for Certiorari, which was then pending and undisposed of, and any delay incident to this supplemental Petition for Rehearing would be in good faith because of the payment, satisfaction and discharge of the judgment and all interest and costs in full. Petitioner and Counsel verily believe the supplemental grounds herein stated might or could be substantial grounds available to the Petitioner, although not previously presented.

JACK E. HORSLEY
1807 Broadway
Mattoon, Illinois
Petitioner's Attorney